

CUSTOMS BULLETIN AND DECISIONS

***Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
Bureau of Customs and Border Protection
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade***

VOL. 38

MARCH 3, 2004

NO. 10

This issue contains:

Bureau of Customs and Border Protection
General Notices

**DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs and Border Protection, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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Bureau of Customs and Border Protection

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1 2004)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: The copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of January 2004. The last notice was published in the CUSTOMS BULLETIN on February 18, 2004.

Corrections or updates may be sent to Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: February 12, 2004.

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

02/02/2004
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U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JANUARY 2004

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REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	REF	OWNER NAME	RES
CP04000002	20040106	20240106	SAMURAI 3000 NINJA		UNITED CUTLERY, CORP.	M
CP04000003	20040106	20240106	SAMURAI 3000 KATANA		UNITED CUTLERY, CORP.	M
CP04000004	20040106	20240106	SAMURAI 3000 TANTO		UNITED CUTLERY, CORP.	M
CP04000005	20040106	20240106	SAMURAI 3000 TANTO		UNITED CUTLERY, CORP.	M
CP04000006	20040106	20240106	SAMURAI 3000 TANTO		UNITED CUTLERY, CORP.	M
CP04000007	20040106	20240106	KR9 BLACK LEGION BLADE		UNITED CUTLERY, CORP.	M
CP04000008	20040106	20240106	UC1259 - SWORDS OF THE ANCIENTS COLLECTION		UNITED CUTLERY, CORP.	M
CP04000009	20040106	20240106	UC 1275 PENDRAGON KNIFE		UNITED CUTLERY, CORP.	M
CP04000010	20040106	20240106	KR4 - SWORDS OF THE ANCIENTS COLLECTION LUCIENDAR		UNITED CUTLERY, CORP.	M
CP04000011	20040106	20240106	KR5 - SWORDS OF THE ANCIENTS COLLECTION MORTHOSETH		UNITED CUTLERY, CORP.	M
CP04000012	20040106	20240106	KR14 VALERIOS SWORD OF DANGER		UNITED CUTLERY, CORP.	M
CP04000013	20040106	20240106	UC1240 - SWORDS OF THE ANCIENTS COLLECTION		UNITED CUTLERY, CORP.	M
CP04000014	20040106	20240106	GH2009 - HIBBEN CUSTOM DESIGN SERIES		UNITED CUTLERY, CORP.	M
CP04000015	20040106	20240106	KR3-S FANG OF BAELEN		UNITED CUTLERY, CORP.	M
CP04000016	20040106	20240106	KR8 THE VALDRIS		UNITED CUTLERY, CORP.	M
CP04000017	20040106	20240106	GH 2014 TIGER SHARK		UNITED CUTLERY, CORP.	M
CP04000018	20040106	20240106	UC1121 - SWORDS OF THE ANCIENTS COLLECTION		UNITED CUTLERY, CORP.	M
CP04000019	20040106	20240106	HEAVY METAL F.K.2 SWORD		UNITED CUTLERY, CORP.	M
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CP04000022	20040107	20240107	LEAF VASE FLOOR LAMP 24-6741		HUBBARDTON FORGE CORPORATION	M
CP04000023	20040116	20240116	POCKET MONSTERS RUBY		NINENDO OF AMERICA INC.	M
CP04000024	20040122	20240122	KIKKER 2150 KHAITY		KIKKER 2150, INC.	M
CP04000025	20040122	20240122	LODORIGIALE CATALOGUE COLLECTION		LODORIGIALE, SRL	M
CP04000026	20040122	20240122	FLORER SCULPTURE		BIRD BRAIN, INC.	M
CP04000027	20040122	20240122	THE LORD OF THE RINGS THE RETURN OF THE KING		NEW LINE PRODUCTIONS INC.	M
CP04000028	20040122	20240122				M
SUBTOTAL RECORDATION TYPE 27						
TK04000001	20040102	20130715	NOEL DESIGN		KATE SPADE LLC	N
TK04000002	20040102	20050528	MAXIM		MAXIM INTEGRATED PRODUCTS INC.	N
TK04000003	20040102	20050528	LAUREN RALPH LAUREN & DESIGN		PRL USA HOLDINGS INC.	N
TK04000004	20040102	20131129	XIGRIS		EI LILLY AND COMPANY	N
TK04000005	20040105	20120528	MISS DIOR (STYLIZED)		PARFUMS CHRISTIAN DIOR, S.A.	N
TK04000006	20040105	20130714	DIVA (STYLIZED)		DIVANEWORKS, INC.	N
TK04000007	20040107	20130714	DEFCON		DEFCON, INC.	N
TK04000008	20040107	20131008	RVRY (STYLIZED)		TODD CRISMAN	N
TK04000009	20040107	20121022	RYRY (STYLIZED)		H. GALLI RUBIN	N
TK04000010	20040107	20130827	CARLTON		BMT BRANDS INC.	N
TK04000011	20040107	20121001	ADVAIR		GLAXO GROUP LIMITED	N
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TK04000013	20040108	20070803	COLOMEX		COLOMEX, INC.	N
TK04000014	20040108	20070803	GLAXO		SMITHKLINE BEECHAM P.L.C.	N
TK04000015	20040108	20050405	GLAXO		SMITHKLINE BEECHAM P.L.C.	N
TK04000016	20040108	20050920	ERMEGILDO ZEGNA & DESIGN		ERMEGILDO ZEGNA CORPORATION	N
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TK04000018	20040108	20050527	ERMEGILDO ZEGNA		ERMEGILDO ZEGNA CORPORATION	N
TK04000019	20040108	20060527	ERMEGILDO ZEGNA		ERMEGILDO ZEGNA CORPORATION	N

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REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TKK0400020	20040108	20071322	ERMENEGILDO ZEGNA	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400021	20040108	20071322	SPYGLASS DESIGN	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400022	20040108	20130315	Z (STYLIZED)	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400023	20040108	20120716	MISCELLANEOUS DESIGN (BLUE DIAMOND-SHAPED TABLET)	PIFZER INC.	N
TKK0400024	20040108	20130322	GRITTI	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400025	20040108	20130329	Z (STYLIZED)	ERMENEGILDO ZEGNA CORPORATION	N
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TKK0400032	20040108	20060730	Z (STYLIZED) ERMENEGILDO ZEGNA SOFT PLUS DESIGN	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400033	20040108	20060730	ERMENEGILDO ZEGNA	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400034	20040108	20060730	ERMENEGILDO ZEGNA	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400035	20040108	20110320	ERMENEGILDO ZEGNA SU MISURA	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400036	20040108	20110508	ZEGNA SPORT(STYLIZED)	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400037	20040108	20110612	CASHMERE COMFORT	ERMENEGILDO ZEGNA CORPORATION	N
TKK0400038	20040109	20110612	JACK DANIEL'S (STYLIZED)	JACK DANIEL'S PROPERTIES INC.	N
TKK0400039	20040109	20120121	ZITHOMAX	PIFZER INCORPORATION	N
TKK0400040	20040109	20120121	WINCHESTER	PIFZER INCORPORATION	N
TKK0400041	20040109	20100125	WINCHESTER AND DESIGN	OLIN CORPORATION	N
TKK0400042	20040109	20060619	WINCHESTER	CT NORMAL	N
TKK0400043	20040109	20120728	BLUE DEVIL AND FLAME DESIGN	DUKE UNIVERSITY	N
TKK0400044	20040109	20120728	CONFIGURATION OF A MAN IN A DEVIL COSTUME	DUKE UNIVERSITY	N
TKK0400045	20040109	20121029	D AND U WITH CROSS DESIGN ON A SHIELD ERUDITIO	DUKE UNIVERSITY	N
TKK0400046	20040110	20110322	Z (STYLIZED)	DUKE UNIVERSITY	N
TKK0400047	20040114	20110727	FOVITIDE	THE MEYER COMPANY	N
TKK0400048	20040114	20090810	ANGELS SO SWEET	SO SWEET LLC.	N
TKK0400049	20040115	20131220	WISHBONE SHAPE OF A HANDLE DESIGN	THE MEYER COMPANY	N
TKK0400050	20040115	20130612	YKE	YKK CORPORATION	N
TKK0400051	20040116	20100706	AUNT HANNAH'S & DESIGN	FLOWERS BAKERIES	N
TKK0400052	20040116	20110306	AUNT HANNAH'S & DESIGN	FLOWERS BAKERIES	N
TKK0400053	20040116	20110306	DESIGN ONLY	LOWER MEREDITH CORPORATION	N
TKK0400054	20040116	20130729	DESIGN ONLY	SMITHLINE BEECHAM CORPORATION	N
TKK0400055	20040116	20130506	DESIGN ONLY	SMITHLINE BEECHAM CORPORATION	N
TKK0400056	20040116	20120924	CAFE KID (STYLIZED)	VIAQUEST, INC.	N
TKK0400057	20040116	20120305	UKID (STYLIZED)	VIAQUEST, INC.	N
TKK0400058	20040116	20131025	COITON & DESIGN	COITON INCORPORATED	N
TKK0400059	20040116	20131025	COITON & DESIGN	COITON INCORPORATED	N
TKK0400060	20040121	20130308	MALING & DESIGN	CHINA NATIONAL CEREALS OILS &	N
TKK0400061	20040121	20131005	HUGS'N KISSES	HERSHEY CHOCOLATE & CONFECTIONER	N
TKK0400062	20040121	20130819	DESIGN	DRIPLESS, INC.	N
TKK0400063	20040121	20130819	DESIGN	DRIPLESS, INC.	N
TKK0400064	20040121	20131213	TIVOLI	DANCO IMPORTATION	N
TKK0400065	20040121	20130511	CLASSY	E.G. HILL COMPANY, INC.	N
TKK0400066	20040122	20130511	FOREVER YOUNG	E.G. HILL COMPANY, INC.	N
TKK0400067	20040122	20130511	LA MORENA	PRODUCTOS ALIMENTICIOS LA MORENA	N
TKK0400068	20040129	20130629	LA MORENA	PRODUCTOS ALIMENTICIOS LA MORENA	N

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TMK0400070	20040129	20101024	KOSKA	MERTER HELVA SANAYI VE TICARET	N
TMK0400071	20040129	20130107	KOSKA HELVACISTI MERTER & DESIGN	MERTER HELVA SANAYI VE TICARET	N
TMK0400072	20040129	20130427	WOLF HEAD (DESIGN)	WOLFPAK, INC.	N
TMK0400073	20040129	20130109	SATURN	E. GLUCK CORPORATION	N
TMK0400074	20040129	20130417	BUBBLE	HARMONY GOLD USA INC.	N
TMK0400075	20040129	20130417	MACROSS	HARMONY GOLD USA INC.	N
TMK0400076	20040129	20130909	MACROSS	HARMONY GOLD USA INC.	N
TMK0400077	20040129	20110304	ROCAWEAR	ROCAWEAR LICENSING LLC.	N
TMK0400078	20040129	20120813	ROCA	ROCAWEAR LICENSING LLC.	N
TMK0400079	20040129	20121015	ROCAWEAR WITH DESIGN	COMET INTERCONTINENTAL INC.	N
TMK0400080	20040129	20120611	ROCA	COMET INTERCONTINENTAL INC.	N
TMK0400081	20040129	20130730	WALL WOLF	HYDE TOOLS, INC.	N
TMK0400082	20040129	20040802	VOITELLO	BARILLA ALIMENTARE S.P.A.	N
SUBTOTAL RECORDATION TYPE			82		
TMK04000001	20040128	99999999	YUPOAL	YUPOAL INTERNATIONAL IINC.	N

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, February 18, 2004,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

**REVOCATION AND MODIFICATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF MEN'S SWIMWEAR**

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of revocation of a tariff classification ruling letter and modification of one ruling letter and revocation of any treatment relating to the classification of certain men's garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter, New York Ruling Letter (NY) I84257, and modifying one ruling letter New York Ruling Letter (NY) I80536, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain men's garments. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification and revocation was published on December 10, 2003, in Volume 37, Number 50, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse or for consumption on or after May 2, 2004.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on December 10, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 50, proposing to revoke one ruling letter, New York Ruling Letter (NY) I84257, to modify one ruling letter New York Ruling Letter (NY) I80536, and to revoke any tariff treatment pertaining to the tariff classification of certain men's garments. These rulings held that elastic cords with stoppers were not drawstrings and did not meet the *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1986), requirements for swimwear. No comments were received in response to this notice.

As stated in the proposed notice, this modification and revocation will cover any rulings on this merchandise that may exist but which have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importa-

tions of the same or similar merchandise, or the importer's or CBP previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY I84257, and modifying NY I80536, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 966760 and HQ 966759, respectively. HQ 966760, revoking NY I84257, is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: January 23, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966760
January 23, 2004
CLA-2 RR:TC:TE 966760 SG
CATEGORY: Classification
TARIFF NO.: 6211.11.1010

MS. LORI J. PENDER
COLUMBIA SPORTSWEAR COMPANY
14375 NW Science Park Drive
Portland, Oregon 97229

RE: Revocation of New York Ruling (NY) I84257, dated July 26, 2002; Men's woven swimwear

DEAR MS. PENDER:

This is in reference to New York ruling letter (NY) I84257, issued to you on July 26, 2002, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a pair of men's shorts. We have reconsidered NY I84257 and found it to be in error.

In NY I84257, we found that a garment identified as style TM4036 was classified in subheading 6203.43.4030, HTSUSA, as men's shorts. We have

reviewed the matter and believe that the correct classification of the garment is in subheading 6211.11.1010, HTSUSA, as men's swimwear. Therefore, this ruling revokes NY 184257.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 184257 was published on December 10, 2003, in the Customs Bulletin, Volume 37, Number 50. No comments were received in response to this notice.

FACTS:

The garment involved is a pair of men's shorts made of 100 percent woven nylon fabric with an inner lining of 100 percent polyester knit mesh fabric. It features an elasticized waistband, five belt loops, a rubberized draw cord extending through the entire length of the waistband, two side slash pockets with mesh pocket fabric, a back pocket which closes by means of a hook and loop fabric, and a side seam zippered cargo pocket with two small drainage holes.

ISSUE:

Whether style TM4036 is properly classified as men's swimwear, heading 6211, HTSUS, or men's shorts, heading 6203, HTSUS?

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

In Hampco Apparel, Inc. v. United States, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) the garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue therein was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the Hampco decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The Guidelines state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category.

Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In an informed compliance publication, "Apparel Terminology under the HTSUS," dated November, 2000, Customs and Border Protection (CBP) provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be conclusive for classification purposes, but rather to provide a basic guideline. In the informed compliance publication, shorts and swimwear are defined as:

Shorts (6103, 6104, 6203, 6204)—are trousers which do not cover the knee or below.

Swimwear (6112, 6211)—is a term referring to garments designed for swimming. Included in this term are swim trunks, which usually have an elasticized waist with a drawstring threaded through it, and a full lightweight support liner. Garments that cannot be identified specifically as swim trunks will be considered shorts. Multiple-use "sports" or "athletic" shorts that bear a close resemblance to swim trunks and are designed for running, team sports etc. are not considered swimwear.

* * * *

See, U.S. Customs Service, What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS, 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

In Headquarters Ruling Letter (HQ) 081477, dated March 21, 1988, we stated that under the Tariff Schedule of the United States, in order to determine whether a garment is designed and constructed for swimming, we will first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. (We note that under the HTS "principal use" replaced "chief use".) See HQ 952751, dated January 12, 1993;

HQ 952209, dated October 2, 1992; HQ 951841, dated August 11, 1992; and HQ 950501, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three Hampco features); and (b) where ALL three features are not present or not conclusive, we then look to the factors set forth in United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter Carborundum)—design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment, for guidance.

Style TM4036 has a mesh inner liner, it therefore meets the Hampco criteria that it has an inner lining of lightweight material.

In the case of style TM4036, it has a fully elasticized waistband. We note that although there is no requirement that the entire waistband be elasti-

cized (HQ 087264, dated June 13, 1990 and HQ 965981, dated March 3, 2003), it is our view that at least 1/2 of the waistband must be elasticized.

We must then ascertain whether the garment has a "drawstring threaded through the elasticized waistband". Without a functioning drawstring, the garment does not satisfy the Hampco test. The American Heritage Dictionary of the English Language, New College Edition, published by Houghton Mifflin Company, 1976 edition, at page 397, defines a drawstring as "A cord or ribbon run through a hem or casing and pulled to tighten or close an opening." Nothing in the definition precludes the cord or ribbon from being made of rubber or elastic, so long as it serves to tighten the entire span of the waistband, that the tightening provided by the cord is not minimal, and thus serves the function of a drawstring. In our view the rubberized cord does all of these things. The waistband construction is adapted for swimming; the tightening provided by the rubberized draw cord is not minimal and serves the function of a drawstring, which is to adjust the size of the waistband. Accordingly, style TM4036, which has a rubberized drawcord threaded through the waistband, meets the criteria of having a functional drawstring threaded through the elasticized waistband.

CBP has been consistent in ruling that even in those instances where the first two factors enumerated by the court in Hampco are present, the third factor (the garment is designed and constructed for swimming) must still be present. Where the third factor is lacking, the article will be considered shorts (See also, HQ 086436, dated May 3, 1990; HQ 086979, dated May 15, 1990; HQ 087476, dated September 7, 1990; HQ 950207, dated December 3, 1991 and HQ 950652, dated February 12, 1992).

The garment is made of a woven nylon outer shell fabric and possesses a mesh liner. The fabrics used to construct this article are relatively lightweight, quick drying, and will not retain an inordinate amount of water. The pockets have been constructed to facilitate drainage. These features indicate that this garment has been designed principally for swimming and thus qualifies as men's swimwear in heading 6211, HTSUS. The presence of pockets and belt loops does not preclude classification as a swimsuit. See, HQ 087357, dated June 25, 1990.

HOLDING:

The garment, style number TM4036, meets the Hampco criteria for classification as swimwear. It is properly classified in subheading 6211.11.1010, HTSUSA, the provision for "Track suits, ski-suits and swimwear; other garments: Swimwear: Men's or boys': Of man-made fibers: Men's", textile category 659, dutiable at the column one rate of 28 percent ad valorem.

NY I84257, dated July 26, 2002, is hereby **REVOKED**.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

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